IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9684 of 1999
with
CIVIL APPLICATION No 11772 of 2000

with

SPECIAL CIVIL APPLICATION No 9687 of 1999
with
CIVIL APPLICATION No 11773 of 2000

with

SPECIAL CIVIL APPLICATION No 9688 of 1999
with
CIVIL APPLICATION No 11774 of 2000

with

SPECIAL CIVIL APPLICATION No 9690 of 1999
with
CIVIL APPLICATION No 11775 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAVJIBHAI JIVABHAI PATEL
Versus

UNION OF INDIA

Appearance:

MR TUSHAR MEHTA for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1,2

MR HM BHAGAT for Respondent No. 2-3,5,8,10

MR PR ABICHANDANI, AGP, for Respondent No. 2,4,6-7,9-10

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/08/2001

ORAL JUDGEMENT

In these four petitions, the petitioners who were granted quarry lease for extracting a minor mineral known as `Black Trap" have challenged the order dated 15-9-1999 passed by the Deputy Conservator of Forests (C), Regional Office, Bhopal, by which the Ministry of Environment & Forests conveyed its inability to approve under section 2 of Forest (Conservation) Act, 1980 the proposal of the Government of Gujarat for diversion of the forest land for renewal of Black Trap quarry lease in Panchmahals District as the mining activities in the proposed area would not be eco-friendly and may also damage/affect several monuments of great historical importance.

2. Various contentions are raised in the petitions which are controverted in the reply affidavit filed on behalf of Union of India. Affidavit-in-rejoinder is also filed on behalf of the petitioners. It is, however, not necessary to enumerate or deal with the contentions raised by the petitioners on merits because in view of the decision of the Apex Court in SAMATHA vs. State of Andhra Pradesh, 1997 (8) SCC 191, and particularly, in view of the directions contained in paragraph 131 thereof (page 277 of the SCC), Mr. Tushar Mehta, learned counsel for the petitioners states that the petitioners are not desirous of pressing the petitions on merits if they are permitted to remove the Black Trap already extracted and stocked on the land in question.

3. In the aforesaid decision, after considering the provisions of Environment (Protection) Act, 1986 and various Forests legislations pertaining to protection and conservation of forests, the Hon'ble Supreme Court gave the following directions to the State of Andhra Pradesh. The said directions are also applicable to the State of Gujarat as similar issues are involved. In the said judgment, the Apex Court gave the following final directions:

"131. The State Government, therefore, is directed to ensure that all industrialists concerned, be they natural or juristic persons stop forthwith mining operations within the Scheduled Area, except where the lease has been granted to the State undertaking i.e. A.P.S.M.D. Corporation; they should report compliance of this order to the Registry of this Court within six months of the receipt of this judgment. The lessees of mining leases are directed not to break fresh mines; however, in the meanwhile, they are entitled to remove the minerals already extracted and stocked in the reserved forest area within four months' time from today. All authorities concerned are directed to ensure compliance thereof. Even the State undertaking carrying the mining operations, would be subject to the regulations under the FC Act and EP Act. It would be open to the State Government to organise cooperative societies composed solely of the Scheduled Tribes to exploit mining operations within the Scheduled Area subject to the compliance of the FC Act and the EP Act."

It is clear that even while issuing directions to the State Government not to renew the mining leases and also requiring the industries to stop the mining operations within the scheduled area, the mining lessees were permitted to remove the minerals already extracted and stocked in the land in question.

4. It also appears that there were certain proceedings before the Hon'ble Supreme Court in connection with the mining activities being carried on in the reserved forests in the entire country. In those proceedings, the petitioners herein had submitted details about their pending stock in the lease area. As far as Rajvibhai Jivabhai Patel (the petitioner in Special Civil Applications No.9684/99 and 9687/99) it was declared that the total quantity of the stock of Black Trap was 16500 Metric Tonne in quarry No. Coop. 12 paiki. Similarly in the case of Manubhai S. Patel (the petitioner in Special Civil Applications No.9688/99 and 9690/99) the pending stock was declared to be 4000 Metric Tonnes for quarry No.12 and 12A taken together.

5. Mr. M.R. Shah, learned Additional Standing Counsel appearing for the Union of India and other Officers of the Central Government is not in a position to oppose the above request for clearing the pending

stock provided the impugned order dated 15-9-1999 at Annexure A to the petition is not disturbed.

6. Mr. P.R. Abichandani, learned AGP, appearing for the State Government and Principal Chief Conservator of Forests of State of Gujarat and respondents No. 5 to 10 who are Officers of the State Government relies on the affidavit filed by the State Government and its Officers and submits that the said respondents will abide by the directions which may be issued by this Court.

7. Having heard the learned counsel for the parties, it is directed that while the decision of the respondents not to renew the mining leases in favour of the petitioners herein is not disturbed, these petitions are disposed of with a direction that the petitioners shall be permitted to remove the Black Trap already extracted and stocked in the areas of Quarry Leases No. Coop. 12 paiki, and 12 and 12A together, by 31st January, 2002. It is further directed that the petitioners shall not carry on any mining activity and the machineries which are required for excavation,if not removed so far, shall be removed by 31st August, 2001. The petitioners may retain only those machineries on the site which are required for the purpose of screening the already excavated stock of Black Trap and for removing the same outside the lease area.

8. It is further clarified that the petitioners are not exonerated from their liability for payment of royalty and other dues, if not paid so far, for the stock to be cleared as per the particulars given before the Hon'ble Supreme Court and noted in paragraph 4 hereinabove. It will also be open to the Officers of the State Government to verify the pending stock on the lease area and to ascertain whether the same is in accordance with the figures given before the Hon'ble Supreme Court.

9. The petitions are accordingly disposed of in terms of the aforesaid directions. Subject to the aforesaid directions, Rule is discharged in all the petitions.

The civil applications are also disposed of in terms of the aforesaid directions. Notice is discharged.

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